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*Attorneys for Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

ALLIANCE FOR THE WILD

ROCKIES, *et al.*,

Plaintiffs,

v.

LEANNE MARTEN, *et al.*,

Defendants.

CV 15-99-M-BMM

JOINT STIPULATION  
CONCERNING PLAINTIFFS'  
MOTION FOR ATTORNEYS'  
FEES

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council (collectively, “Plaintiffs”), and Defendants Leanne Marten, in her official capacity Regional Forester of Region One of the U.S. Forest Service, the United States Forest Service (“Forest Service”), and the United States Fish and Wildlife Service (“FWS”) (collectively, “Defendants”) who, by and through their undersigned counsel, state as follows:

WHEREAS, on July 31, 2015, Plaintiffs filed *Alliance for the Wild Rockies et al. v. Marten et al.*, 9:15-cv-99-BMM, alleging, among other things, that the Service’s failure to reinitiate consultation on the Northern Rocky Mountains Lynx Direction (“Lynx Amendment”) and the Custer National Forest Plan to address changes in grizzly bear distribution violated the Endangered Species Act (“ESA”), C.F.R. § 402.16(b) and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), and that the Forest Service’s inventory of lynx habitat in the Custer-Gallatin National Forest violated the ESA and the National Environmental Policy Act (“NEPA”) 42 U.S.C. § 4331 *et seq.*;

WHEREAS, on December 10, 2015 (ECF No. 7) Plaintiffs filed an amended complaint in the above captioned case;

WHEREAS, on May 3, 2016, the parties concluded summary judgment briefing;

WHEREAS, on June 6, 2016, Plaintiffs filed a motion for preliminary injunction, arguing in part that they were likely to succeed on the merits of their ESA claims;

WHEREAS, on June 28, 2016, Defendants informed Plaintiffs and this Court that Defendants had suspended the Greater Red Lodge Vegetation Management Project (“Project”) in order to reinitiate consultation under the ESA to remedy factual errors in the Updated Biological Assessment, ECF No. 36;

WHEREAS, on November 22, 2016, this Court granted Plaintiffs’ motion for preliminary injunction, ECF No. 66;

WHEREAS, on January 17, 2017, the Forest Service withdrew its Record of Decision authorizing the Project;

WHEREAS, on January 27, 2017, Defendants filed an unopposed motion to dismiss Plaintiffs’ claims without prejudice, ECF No. 67;

WHEREAS, on January 30, 2017, this Court granted Defendants’ motion to dismiss;

WHEREAS, on February 2, 2017, Plaintiffs filed a motion for attorneys’ fees and costs, ECF No. 73;

WHEREAS, Plaintiffs, and Defendants, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs’ motion for attorneys’ fees and costs;

WHEREAS, Plaintiffs and Defendants agree that settlement of Plaintiffs’ motion for attorneys’ fees in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, Plaintiffs and Defendants hereby stipulate and agree as follows:

1. Defendants agree to pay Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council's reasonable attorneys' fees and costs incurred in connection with their complaint, motion for summary judgment, and motion for preliminary injunction, and pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g), in the amount of \$79,711.66. Plaintiffs agree to accept this amount in full satisfaction of any and all claims, demands, rights, and causes of action for attorneys' fees and costs incurred in connection with the above-captioned litigation pursuant to the ESA, 16 U.S.C. § 1540(g), and/or any other statute and/or common law theory, through and including the date of this agreement. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the date of this agreement.

2. Plaintiffs' release set forth in paragraph 1 is expressly limited to the above-captioned action and does not apply to any other litigation including, but not limited to, any future litigation regarding the Greater Red Lodge Vegetation Management Project. By this Agreement, Defendants do not waive any right to contest attorneys' fees claimed by Plaintiffs, or their counsel, including hourly rates, in any future litigation, or continuation of the present actions. Further, this Agreement has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

3. Plaintiffs agree to furnish Defendants with the information necessary to effectuate the payment specified in paragraph 1 above. Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. §

1540(g)(4), within ten (10) days of the receipt of the necessary information from Plaintiffs or the approval of this Agreement by the Court, whichever is later. Plaintiffs' attorneys agree to send confirmation of the receipt of the payment to counsel for Defendants within 14 days of such payment.

4. Plaintiffs and Defendants agree that this Agreement was negotiated and entered into in good faith and that it constitutes a settlement of claims that were vigorously contested, denied, and disputed. By entering into this Agreement, neither Plaintiffs nor Defendants waive any claim or defense, except as expressly provided herein.

5. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

6. No provision of this Agreement shall be interpreted to or constitute a commitment or requirement that the Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural.

7. The Agreement contains all of the agreement between Plaintiffs and Defendants, and is intended to be the final and sole agreement between them. Plaintiffs, and Defendants agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

8. The terms of this Agreement shall become effective upon entry of an order by the Court (similar in substance to the attached Proposed Order) approving the Agreement.

9. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of the Agreement and do hereby agree to the terms herein.

DATED: June 5, 2017

Respectfully submitted,

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S. JAY GOVINDAN,  
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